

**AGENDA**  
**UTILITIES SERVICE BOARD MEETING**

Utilities Service Board Room  
Bloomington Utilities Department Administrative Building  
600 E. Miller Drive  
Bloomington, IN 47401

Tom Swafford, President  
John Whitehart, Vice President  
Jeff Ehman  
Sam Frank  
Julie Roberts  
Jason Banach  
Pedro Roman  
Tim Mayer, ex-officio  
Tom Micuda, ex-officio

**December 8, 2008**  
**4:30 p.m. Finance Subcommittee**

- I. Call to order
- II. Discussion of bad debt to be written off – Michael Horstman
- III. Discussion of the contract with Technology Service Corporation for consulting services – Michael Horstman
- IV. Discussion of the Addendum to the Water/Wastewater Assistance Program Contract with South Central Community Action Program – Michael Horstman
- III. Petitions and communications\*
- IV. Adjournment

\* Brief public comment will be limited to 5 minutes per person.

**ADDENDUM TO WATER/WASTEWATER ASSISTANCE PROGRAM CONTRACT**

THIS ADDENDUM is made and entered into by and between the South Central Community Action Program, Inc. (hereinafter referred to as "SCCAP") and City of Bloomington Utilities Department through its Utilities Service Board (hereinafter referred to as "CBU") to extend the WATER/WASTEWATER ASSISTANCE PROGRAM CONTRACT entered into by and between the parties on the 17th day of April, 2007.

WHEREAS, pursuant to the terms of said Contract the parties have jointly operated the Water/Wastewater Assistance Program (hereinafter referred to as "Program") for the 2007 calendar year; and,

WHEREAS, the purpose of the Program is to provide assistance to eligible low-income households in payment of CBU utility bills; and,

WHEREAS, in late 2007 the parties agreed to extend the term of the Contract to continue until the end of the 2008 calendar year while keeping all other terms and conditions of the Contract unchanged; and,

WHEREAS, the parties have now agreed to extend the term of the Contract to continue until the end of the 2009 calendar year while keeping all other terms and conditions of the Contract unchanged;

THEREFORE, THE PARTIES, INTENDING ~~TO~~ BE BOUND, have executed this ADDENDUM TO WATER/WASTEWATER ASSISTANCE PROGRAM CONTRACT extending the term of the original Contract to the end of the 2009 calendar year, this 20th day of November, 2008.

CITY OF BLOOMINGTON  
UTILITIES SERVICE BOARD  
By:

\_\_\_\_\_  
L. Thomas Swafford, President

SOUTH CENTRAL COMMUNITY  
ACTION PROGRAM, INC.  
By:

Todd Lare  
\_\_\_\_\_  
Name Printed: Todd Lare  
Title: Executive Director

## **AGREEMENT FOR CONSULTING SERVICES**

This Agreement, entered into on this 17 day of Nov, 2008 by and between the City of Bloomington Utilities Department through its Utilities Service Board (hereinafter referred to as "Board"), and Technology Service Corporation (hereinafter referred to as "Consultant"),

### **WITNESSETH:**

WHEREAS, the Board wishes to support and maintain the CUBS Utilities Billing System from January 1, 2009-December 31, 2009; and

WHEREAS, the Board requires the services of a software developer in order to support and maintain the software which shall be hereinafter referred to as "the Services";

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, Consultant is willing and able to provide such Services to the Board;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Article 1. Scope of Services:** Consultant shall provide required Services for the Board as set forth in Exhibit A, Scope of Services, Costs and Schedule. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Consultant shall diligently pursue its work under this Agreement and shall complete the Services as described in Exhibit A in a timely manner. Consultant shall perform all Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the Board as may be requested and desirable, including primary coordination with the Utilities Department official(s) designated by the Board as project coordinator(s).

Consultant agrees that any information or documents, including digital GIS information, supplied by the Board pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

**Article 2. Standard of Care:** Consultant shall be responsible for completion of the Services in sufficient manner to meet high professional standards. The Board shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, the Board shall not unreasonably withhold its approval as to the adequacy of such performance.

**Article 3. Responsibilities of the Board:** The Board shall provide all necessary information regarding requirements for the Services. The Board shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Board shall designate who is authorized to act on its behalf with respect to this Agreement.

**Article 4. Compensation:** The Board shall pay Consultant a fee based on the payment schedule set forth in Exhibit A. The total compensation paid, including fees and expenses, shall not exceed the amount of \$ 16,000.00 (sixteen thousand dollars). The Payments will be made according to Consultant's monthly progress statements for each phase and shall be invoiced for the percentage of work completed only.

Additional services not set forth in Exhibit A, changes in work, or incurred expenses in excess of the rates set forth in Exhibit A must be authorized in writing by the Board or its designated project coordinator prior to such work being performed, or expenses incurred. The Board shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses must be submitted within thirty (30) days of the completion of the work or expenditure, and must be accompanied by a statement of itemized costs.

**Article 5. Appropriation of Funds:** Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Board are at any time not forthcoming or are insufficient, through failure of any entity, including the Board itself, to appropriate funds or otherwise, then the Board shall have the right to terminate this Agreement without penalty as set forth in Article 7 herein.

**Article 6. Schedule:** Consultant shall perform the Services according to the schedule set forth in Exhibit A. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

**Article 7. Termination:** In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Board may terminate or suspend performance of this Agreement at the Board's prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Board, and the Board shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to the Consultant's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Board, as set forth in Article 11 herein.

**Article 8. Identity of Consultant:** Consultant acknowledges that one of the primary reasons for its selection by the Board to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Consultant has represented will be responsible therefor. Consultant thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit B, Principal Personnel, and such other personnel in the employ under contract or under the supervision of Consultant whom the Board shall approve. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The Board reserves the right to reject any of the Consultant's personnel or proposed outside professional subconsultants, and the Board reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Cost Estimates:** All estimates of construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Board has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Documents:** All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Board or others on modifications or extensions of this project or on any other project. The Board may elect to reuse such documents; however any reuse without prior written verification or adaptation by Consultant for the specific purpose intended will be at the Board's sole risk and without liability or legal exposure to the Consultant. The Board shall indemnify and hold harmless the Consultant against all judgments, losses, damages, injuries and expenses arising out of or resulting from such reuse. Any verification or adaptation of documents by the Consultant will entitle the Consultant to additional compensation at rates to be agreed upon by the Board and the Consultant.

**Article 11. Ownership of Documents and Intellectual Property:** All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Board as part of the Services shall become the property of the Board. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

**Article 12. Independent Contractor Status:** During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Board.

**Article 13. Indemnification:** Consultant shall defend, indemnify and hold harmless the City of Bloomington, the Board, and the officers, agents and employees of the City and the Board from any and all claims, demands, damages, costs, expenses or other liability arising out of the

Agreement or occasioned by the reckless or negligent performance or attempted performance of any provision thereof, including, but not limited to, any reckless or negligent act or omission to act or any willful misconduct on the part of the Consultant or his agents or employees or independent contractors directly responsible to him, except that the above shall not apply to the sole negligence or willful misconduct of the Board or the Board's agents, servants or independent contractors who are directly responsible to the Board. This indemnification provision shall apply even if there is concurrent or joint negligence of the Consultant and the Board, and even if there is active or passive negligence by either or both parties.

**Article 14. Insurance:** During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Board, and the officers, employees and agents of each shall be named as insured under each policy, and the policy shall stipulate that the insurance will operate as primary insurance and that no other insurance effected by the City will be called upon to contribute to a loss hereunder.

Consultant shall provide evidence of each insurance policy to the Board prior to the commencement of work under the Agreement. Approval of the insurance by the Board shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from service or operations performed pursuant to this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Board required proof that the insurance has been procured and is in force and paid for, Board shall have the right at Board's election to forthwith terminate the Agreement.

**Article 15. Conflict of Interest:** Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

**Article 16. Waiver:** No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to

enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

**Article 17. Severability:** The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**Article 18. Assignment:** Neither the Board nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without the Board's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

**Article 19. Third Party Rights:** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Board and the Consultant.

**Article 20. Governing Law and Venue:** This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in Monroe County, Indiana.

**Article 21. Non-Discrimination:** Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

**Article 22. Compliance with Laws:** In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. When appropriate, Consultant shall advise Board of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Board in a timely manner of the conflict, attempts of resolution, and planned course of action.

**Article 23. Notices:** Any notice required by this Agreement shall be made in writing to the addresses specified below:

Board:

Consultant:

City of Bloomington Utilities Department

Technology Service Corporation

P. O. Box 1216  
Bloomington, IN 47402

116 W 6<sup>th</sup> St Suite 200  
Bloomington, IN 47404

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Board and the Consultant.

**Article 24. Intent to be Bound:** The Board and the Consultant each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

**Article 25. Integration and Modification:** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Board and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

This Agreement may be modified only by a written amendment signed by both parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first written above.

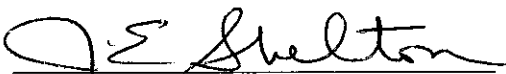
**Owner**

City of Bloomington Utilities Department  
Utilities Service Board

**Consultant**

By: \_\_\_\_\_,  
\_\_\_\_\_, USB President  
President

Attest: \_\_\_\_\_  
Patrick Murphy  
Director of Utilities

By:   
James E. Shelton  
Vice President

Attest: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_



## **Appendix A: Scope of Services, Costs and Schedule**

This contract is a time and materials contract, and has a not-to-exceed value of \$16,000. Hourly rates for the principal personnel are listed in Appendix B.

### **Support and maintenance includes:**

1. Resolution of system issues / bug fixes / data corrections, as specified by CBU officials
2. Minor functionality enhancements, as specified by CBU officials in advance. Minor enhancements include:
  - new reports
  - modifications to existing forms and reports
  - modifications to the CBU Online electronic billing module
  - modifications to the underlying data
  - modifications to billing rules
3. Emergency assistance on time-critical billing functions when the appropriate CBU personnel are absent
4. Support for CBU Online billing system

### **Other Software Service Guidelines:**

1. CBU will designate one person who will approve all requests for work, other than emergency production support, under this contract.
2. All support and maintenance is billed on a time and materials basis, and is not to exceed 200 hours without written advance authorization from the designated CBU official.
3. No work will be performed or billed against this contract without advance written authorization from the director of CBU or his designate. Authorization sent via electronic mail shall be considered written authorization, for the purposes of this contract.

## **Appendix B: Principal Personnel**

The following personnel from Technology Service Corporation are authorized to work on this contract.

Geoffrey McKim  
Program Manager and Primary Point of Contact  
[Geoff.mckim@tsc.com](mailto:Geoff.mckim@tsc.com)  
Voice: 812.245.8021  
Rate: \$140/hour

Thomas Root  
Systems Engineer / Software Developer  
[thomas.root@tsc.com](mailto:thomas.root@tsc.com)  
Voice: 812.245.8016  
Rate: \$90/hour

Bob Poortinga  
Senior Systems Engineer  
[Bob.poortinga@tsc.com](mailto:Bob.poortinga@tsc.com)  
Voice: 812.245.8027  
Rate: \$120/hour